

USSN: 10/001,379
Atty. Docket No.: 2001B095
Amdt. dated December 4, 2003
Reply to Office Action of September 9, 2003

REMARKS/ARGUMENTS

Claims 1-12 are pending in the application.

Claims 1-4 and 10 are rejected under 35 U.S.C. § 102(b) as being anticipated by Fischer et al. WO99/67094, for which U.S. Patent 6,562,478 (Pat. '478) is the English equivalent.

Applicant respectfully traverses the rejection.

The film of claims 1-4 of Applicant's invention is a patentably distinct structure from that disclosed and claimed in Pat. '478. The base layer of Applicant's invention is comprised of a polyethylene preferably medium density polyethylene (MDPE) or high density polyethylene (HDPE), while the base layer of Pat. '478 is in particular a 90% to 100% by weight a propylene polymer and the propylene polymer preferably is comprised of 98% to 100% by weight propylene (Col. 11, ll. 3-6). If either MDPE or HDPE is even present in the polymer mixture of Pat. '478, the proportion of MDPE or HDPE cannot exceed 15% by weight of the mixture (Col. 11 ll. 30-31). The base layer of Applicant's invention and the reference are comprised of entirely different polymeric materials.

Applicant respectfully submits that use of MDPE or HDPE in combination with a cavitating agent in the base layer is not only structurally different than the propylene base layer and cavitating agent of Pat. '478, but it also achieves a different result. The use of the higher density polyethylene with a cavitating agent such as CaCO_3 provides the film with a water vapor transmission rate (WVTR) of at least 3.0 grams/100 square inches/day at 38° and 100 % relative humidity. The propylene and cavitating agent base layer of Pat. '478 would only provide a WVTR in the range of 0.4 to 0.8 grams/100 square inches/day under similar conditions. In addition, Applicant's base layer also does not include additives such as hydrocarbon resins as is preferred in the structure of Pat. '478 (Col. 12, ll. 26-27).

Applicant respectfully submits that Pat. '478 does not anticipate claim 10 of the invention which reads on a method of making a film with a base layer of polyethylene and a cavitating agent and

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skin layer comprising a hydrocarbon resin and a copolymer of ethylene and at least one monomer having at least three carbon atoms. Pat. '478 does not teach or disclose a film having this claimed composition and it does not disclose or claim a method of making a film of this composition.

Applicant respectfully submits that for the foregoing reasons Pat. '478 does not anticipate claims 1-4 and 10 of the invention and requests withdrawal of the rejection under 35 U.S.C. § 102(b).

Claims 1-12 are rejected under 35 U.S.C. § 102(b) as being anticipated by Murschall et al. U.S. Patent 5,683,802 (Pat. '802).

Applicant respectfully traverses the rejection.

The structure of the film of Applicant's invention is patentably distinct from that of Pat. '802.

The base layer of Pat. '802 is a propylene polymer that generally contains from 95% to a 100% by weight propylene and preferably from 98% to 100% by weight propylene (Col. 7, ll. 58-60). If either MDPE or HDPE is present in the polymer mixture the content of these polyolefins in each case cannot exceed 15% by weight based on the polymer mixture (Col. 5, ll. 14-19). A base layer of this composition is structurally different than Applicant's base layer which is comprised of higher density polyethylene, preferably MDPE and HDPE. Also, including vacuole-inducing particles in the polymer mixture of

Pat. '802 does not achieve the structure that would have the high WVTR of the present invention. The lower density of the reference's polymer mixture cannot achieve the open cell structure necessary for high WVTR properties.

The skin layer of Pat. '802 comprises a polymer and spherical ceramic particles. The structure of the film of Applicant's invention does not include ceramic particles. The inclusion of ceramic particles in the skin layer would have a negative, if any, effect on the WVTR of the film.

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Applicant respectfully submits that Pat. '802 does not anticipate claims 10-12 of Applicant's invention which read on a method of making a film with a base layer of polyethylene and a cavitating agent and skin layer comprising a hydrocarbon resin and a copolymer of ethylene and at least one monomer having at least three carbon atoms, which skin layer does not include ceramic particles in the polymer mixture. Pat. '802 does not teach or disclose a film having this claimed composition and it does not disclose or claim a method of making a film of this composition.

Applicant respectfully traverses the Examiner's position that the invention taught by Murschall, Pat. '802, would possess the claimed properties of the present invention given Pat. '802 includes the same materials as instantly claimed and is produced by the same method as the reference. Applicant respectfully submits it is shown: 1) that the film of his invention is comprised of different materials, higher density polyethylene and a cavitating agent rather than propylene and a cavitating agent and the absence of ceramic particles, to achieve high WVTR capability, porosity and unidirectional tear properties and 2) that there is no teaching in the reference of a method to make a film comprised of the materials of Applicant's invention. Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 102(b).

Reconsideration and allowance are respectfully requested.

Respectfully submitted,

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